

## Internal Revenue Service

## Department of the Treasury

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### Legend

Parent =

Distributing 2 =

Distributing 1 =

Controlled =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

Sub 6 =

Sub 7 =

Sub 8 =

LLC =

a =

b =

c =

d =

e =

f =

g =

h =

i =

i =

k =

l =

m =

n =

o =

p =

q =

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s =

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u =

v =

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x =

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aa =

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zz =

aaa =

bbb =

ccc =

ddd =

eee =

fff =

ggg =

hhh =

iii =

jjj =

kkk =

lll =

mmm =

nnn =

ooo =

Date A =

Date B =

Business A =

Business B =

Charter =

Amended Charter =

Transaction A =

Transaction B =

Transaction C =

Dear :

This letter responds to your July 31, 2008 request for rulings on certain federal income tax consequences of the Proposed Transaction (described below). The information provided in that letter and in later correspondence is summarized below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by the appropriate parties. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process. In particular, this office has not reviewed any information pertaining to, and has made no determination regarding, whether the Proposed Transaction: (i) satisfies the business purpose requirement of § 1.355-2(b) of the Income Tax Regulations; (ii) is used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (see § 355(a)(1)(B) of the Internal Revenue Code (the “Code”) and § 1.355-2(d)); or (iii) is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in the distributing corporation or the controlled corporation (see § 355(e) and § 1.355-7).

### **Summary of Facts**

Parent is a publicly-traded corporation and the common parent of an affiliated group of corporations that files a consolidated federal income tax return. As of Date A, Parent had a shares of common stock (the “Parent Common Stock”) outstanding. Parent is a holding company and through its subsidiaries is engaged in several businesses, including Business A and Business B.

Distributing 2 has b shares of common stock (the “Distributing 2 Common Stock”) outstanding, all of which are owned by Parent.

Sub 1 has approximately c shares of common stock (the “Sub 1 Common Stock”) outstanding, of which Distributing 2 owns approximately d shares (approximately e percent), Sub 4 owns approximately f shares (approximately g percent), and Distributing 1 owns approximately h shares (approximately i percent).

Sub 2 has class A common stock, class B common stock, and class C convertible preferred stock outstanding. Sub 2 has (i) approximately j shares of class A common stock outstanding, of which Distributing 2 owns approximately k shares (approximately l percent) and Distributing 1 owns approximately m shares (approximately n percent); (ii) approximately o shares of class B common stock outstanding, of which Distributing 2 owns approximately p shares (approximately q percent), Distributing 1 owns approximately r shares (approximately s percent) and Sub 4 owns approximately t shares (approximately u percent); and (iii) approximately v shares of class C convertible preferred stock outstanding, of which Distributing 2 owns approximately w shares (approximately x percent), Distributing 1 owns approximately y shares (approximately z percent) and Sub 1 owns approximately aa shares (approximately bb percent).

Sub 3 had cc shares of common stock outstanding, all of which were owned by Sub 1, and dd shares of series A participating preferred stock outstanding, all of which were owned by Sub 1.

Sub 4 has approximately ee shares of common stock (the “Sub 4 Common Stock”) outstanding, of which Sub 1 owns approximately ff shares (approximately gg percent) and Distributing 1 owns hh shares (approximately ii percent).

Distributing 1 has common stock (the “Distributing 1 Common Stock”) and series A common stock (the “Distributing 1 Series A Common Stock”) outstanding. Distributing 1 has approximately jj shares of Distributing 1 Common Stock outstanding, of which Sub 1 owns approximately kk shares (approximately ll percent), Sub 4 owns approximately mm shares (approximately nn percent), Sub 2 owns approximately oo shares (approximately pp percent), and Sub 5 (a wholly-owned indirect subsidiary of Distributing 1) owns a . In addition, Distributing 1 has approximately qq shares of Distributing 1 Series A Common Stock outstanding, all of which are owned by Sub 4.

Sub 6 has rr shares of common stock (the “Sub 6 Common Stock”) outstanding, all of which are owned by Distributing 1.

Sub 7 has ss shares of common stock outstanding, all of which are owned by Distributing 1.

Controlled has class A common stock (the “Controlled Class A Common Stock”) and class B common stock (the “Controlled Class B Common Stock” and together with

Controlled Class A Common Stock, the “Controlled Common Stock”) outstanding. As of Date A, Controlled has tt shares of Controlled Class A Common Stock outstanding, of which Distributing 1 owns uu shares (approximately vv percent) and ww shares (approximately xx percent) are publicly-traded. In addition, Controlled has yy shares of Controlled Class B Common Stock outstanding, all of which are owned by Distributing 1.

The Controlled Class A Common Stock carries zz vote(s) per share and the Controlled Class B Common Stock carries aaa vote(s) per share. Accordingly, the Controlled Common Stock owned by Distributing 1 represents approximately bbb percent by value, and approximately ccc percent by vote, of the outstanding Controlled stock. Under Controlled’s Charter, owners of Controlled Class B Common Stock have the right to elect ddd percent of Controlled’s board of directors.

Sub 8 has class A common stock and class B common stock (the “Sub 8 Class B Common Stock”) outstanding. Sub 8 has eee shares of class A common stock outstanding, all of which are owned by Controlled through LLC, an entity disregarded as separate from Controlled for federal income tax purposes under § 301.7701-3 (a “disregarded entity”), and approximately fff shares of Sub 8 Class B Common Stock outstanding, all of which are owned by Sub 4.

Parent, Distributing 2, and Distributing 1 each engage, both directly and indirectly, through members of their separate affiliated group, as defined in § 355(b)(3)(B) (respectively, the “Parent SAG”, the “Distributing 2 SAG”, and the “Distributing 1 SAG”), in Business A. Controlled directly engages in Business B through LLC. Financial information has been submitted indicating that Business A and Business B each has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

Parent has determined that the Proposed Transaction will serve the following corporate business purposes: (i) improve the “fit” of Parent’s businesses, (ii) permit Parent management to “focus” on a more narrowly-tailored portfolio of businesses, (iii) improve the regulatory profile of the Parent and Controlled businesses, and (iv) make Parent equity-based compensation more responsive to the financial performance of Parent’s remaining businesses.

Prior to the Proposed Transactions, Parent simplified its corporate structure by consummating several transactions including Transaction A and Transaction B.

### **Proposed Transaction**

In order to effect the separation of Business A and Business B, Parent proposes the following series of transactions (the “Proposed Transaction”):



- (i) Pursuant to a merger agreement (the “Sub 6 Merger Agreement”), Sub 6 may merge into a newly-formed disregarded entity that will be wholly-owned by Distributing 1 (the “Sub 6 Merger”). Parent does not expect to consummate the Sub 6 Merger if it obtains certain assurances as to the state tax consequences of the Proposed Transaction.
- (ii) Pursuant to a merger agreement (the “Sub 1 Merger Agreement”), Sub 1 will merge into Distributing 2 (the “Sub 1 Merger”). The Sub 1 Common Stock owned by Distributing 1 and Sub 4 will be converted into Distributing 2 Common Stock.
- (iii) Pursuant to a merger agreement (the “Sub 4 Merger Agreement”), Sub 4 will merge into Distributing 2 (the “Sub 4 Merger”). The Sub 4 Common Stock owned by Distributing 1 will be converted into Distributing 2 Common Stock.
- (iv) Distributing 1 will distribute all of its Controlled Common Stock to Distributing 2 in exchange for Distributing 1 Series A Common Stock and Distributing 1 Common Stock owned by Distributing 2 (the “First Internal Split-Off”).
- (v) Distributing 2 will contribute all of its Sub 8 Class B Common Stock to Controlled in exchange for ggg newly-issued shares of Controlled Class A Common Stock (the “Sub 8 Exchange”).
- (vi) Distributing 2 will distribute all of its Controlled Common Stock to Parent in exchange for Distributing 2 Common Stock owned by Parent (the “Second Internal Split-Off”).
- (vii) Controlled will declare and pay a dividend of \$hhh per share of Controlled Common Stock (approximately \$iii in the aggregate) (the “Special Dividend”). Controlled may finance the Special Dividend, in part, through a bridge loan from a syndicate of third-party lenders. In structuring the Proposed Transaction, it was important to these lenders that Controlled not draw under the bridge loan until near the time of the External Distribution (as defined below) and until the parties provided certain assurances that the External Distribution would, in fact, take place. Therefore, contemporaneously with a borrowing under the bridge loan, Parent will deposit its Controlled Common Stock with an agent to facilitate the External Distribution.
- (viii) Controlled will file Amended Charter in which, among other things, Controlled Class A Common Stock and Controlled Class B Common Stock will be converted into a new class of common stock (the “Controlled New Common Stock”) (the “Recapitalization”). Controlled may

consummate a reverse stock split after the Recapitalization (either immediately or some time later). If authorized by Controlled shareholders, Controlled may consummate the reverse stock split at a ratio of either jjj or kkk. This reverse stock split, if consummated, is intended to qualify as a reorganization described in § 368(a)(1)(E).

- (ix) Parent will distribute all of its Controlled New Common Stock to Parent shareholders (the “External Distribution”). At Parent’s election, the External Distribution will be accomplished through (i) a pro rata distribution of Controlled New Common Stock to Parent shareholders (the “External Spin-Off”), (ii) an offer to Parent shareholders to exchange all or a portion of their Parent Common Stock for Controlled New Common Stock (the “External Split-Off”), or (iii) an External Split-Off in part and an External Spin-Off in part. If Parent elects to conduct an External Split-Off and Parent shareholders do not subscribe for all of the Controlled New Common Stock owned by Parent, Parent will, as promptly as practical, distribute its remaining Controlled New Common Stock to Parent shareholders on a pro rata basis (the “Clean-Up Spin-Off”). No fractional shares of Controlled New Common Stock will be issued in the External Distribution. Instead, an agent will aggregate and sell all fractional shares on the open market and transfer the proceeds to Parent shareholders otherwise entitled to fractional shares.

Parent may consummate a reverse stock split contemporaneously with the External Distribution. Parent may consummate the reverse stock split at a ratio of either lll or mmm. This reverse stock split, if consummated, is intended to qualify as a reorganization described in § 368(a)(1)(E).

In connection with the Proposed Transaction, Parent, Controlled, and certain of their respective subsidiaries have entered into a separation agreement, a tax matters agreement and a transition services agreement. Additionally, Parent, Controlled, and certain of their respective subsidiaries have extended or modified certain pre-existing commercial agreements and intellectual property agreements. The agreements respecting the foregoing (and certain other ancillary agreements previously described) are collectively referred to as the “Continuing Agreements”.

Finally, due to current uncertainties in the credit markets, Parent has agreed, in the event Controlled is unable to refinance its bridge loan, to extend a nnn year term loan to Controlled (the “Contingency Loan”) to provide Controlled additional time to secure long-term financing.

## **Representations**

### Sub 6 Merger

The following representations have been made regarding the Sub 6 Merger:

(a1) Distributing 1, on the date of adoption of the Sub 6 Merger Agreement, and at all times until the Sub 6 Merger, will be the owner of at least 80 percent of the Sub 6 Common Stock.

(b1) No shares of Sub 6 Common Stock will have been redeemed during the three years preceding the adoption of the Sub 6 Merger Agreement.

(c1) All distributions from Sub 6 to Distributing 1 in the Sub 6 Merger will be made within a single taxable year of Sub 6.

(d1) Upon the Sub 6 Merger, Sub 6's separate legal existence will cease.

(e1) Sub 6 will retain no assets following the Sub 6 Merger.

(f1) Sub 6 will not have acquired assets in any nontaxable transaction at any time, except for acquisitions occurring more than three years prior to the date of adoption of the Sub 6 Merger Agreement.

(g1) No assets of Sub 6 have been, or will be, disposed of by either Sub 6 or Distributing 1, except for (i) dispositions in the ordinary course of business, (ii) dispositions occurring more than three years prior to adoption of the Sub 6 Merger Agreement, and (iii) dispositions pursuant to Transaction B.

(h1) Except for Transaction B, the liquidation of Sub 6 will not be preceded or followed by the reincorporation in, or transfer or sale to, a recipient corporation of any of the businesses or assets of Sub 6, if persons holding, directly or indirectly, more than 20 percent in value of the Sub 6 Common Stock also hold, directly or indirectly, more than 20 percent in value of the stock in the recipient corporation. For purposes of this representation, ownership will be determined by application of the constructive ownership rules of § 318(a) as modified by § 304(c)(3).

(i1) Prior to adoption of the Sub 6 Merger Agreement, no assets of Sub 6 will have been distributed in kind, transferred, or sold to Distributing 1, except for (i) transactions occurring in the normal course of business, (ii) transactions occurring more than three years prior to adoption of the Sub 6 Merger Agreement, and (iii) transactions pursuant to Transaction B.

(j1) Sub 6 will report all earned income represented by assets that will be distributed to Distributing 1 such as receivables being reported on a cash basis, unfinished construction contracts, commissions due, etc.

(k1) The fair market value of the assets of Sub 6 will exceed its liabilities both at the date of the adoption of the Sub 6 Merger Agreement and immediately prior to the Sub 6 Merger.

(l1) There is no intercompany debt existing between Distributing 1 and Sub 6 and none has been cancelled, forgiven, or discounted, except for (i) transactions that occurred more than three years prior to the date of adoption of the Sub 6 Merger Agreement and (ii) approximately \$000 intercompany obligation of Sub 6 that may be eliminated prior to the Sub 6 Merger as part of Transaction B.

(m1) Distributing 1 is not an organization that is exempt from federal income tax under § 501 or any other provision of the Code.

(n1) All other transactions undertaken contemporaneously with, in anticipation of, in conjunction with, or in any way related to, the Sub 6 Merger have been fully disclosed.

#### Sub 1 Merger

The following representations have been made regarding the Sub 1 Merger:

(a2) Distributing 2, on the date of adoption of the Sub 1 Merger Agreement, and at all times until the Sub 1 Merger, will be the owner of at least 80 percent of the Sub 1 Common Stock.

(b2) No shares of Sub 1 Common Stock will have been redeemed during the three years preceding the adoption of the Sub 1 Merger Agreement.

(c2) All distributions from Sub 1 to Distributing 2 in the Sub 1 Merger will be made within a single taxable year of Sub 1.

(d2) Upon the Sub 1 Merger, Sub 1's separate legal existence will cease.

(e2) Sub 1 will retain no assets following the Sub 1 Merger.

(f2) Except for the First Internal Split-Off and Transaction A, the liquidation of Sub 1 will not be preceded or followed by the reincorporation in, or transfer or sale to, a recipient corporation of any of the businesses or assets of Sub 1, if persons holding, directly or indirectly, more than 20 percent in value of the Sub 1 Common Stock also hold, directly or indirectly, more than 20 percent in value of the stock in the recipient corporation. For purposes of this representation, ownership will be determined by application of the constructive ownership rules of § 318(a) as modified by § 304(c)(3).

(g2) Prior to adoption of the Sub 1 Merger Agreement, no assets of Sub 1 will have been distributed in kind, transferred, or sold to Distributing 2, except for

(i) transactions occurring in the normal course of business and (ii) transactions occurring more than three years prior to adoption of the Sub 1 Merger Agreement.

(h2) Sub 1 will report all earned income, if any, represented by assets that will be distributed to Distributing 2, Distributing 1, and Sub 4, such as receivables being reported on a cash basis, unfinished construction contracts, commissions due, etc.

(i2) The fair market value of the assets of Sub 1 will exceed its liabilities both at the date of the adoption of the Sub 1 Merger Agreement and immediately prior to the Sub 1 Merger.

(j2) There is no intercorporate debt existing between Distributing 2 and Sub 1 and none has been cancelled, forgiven, or discounted, except for (i) transactions that occurred more than three years prior to the date of adoption of the Sub 1 Merger Agreement and (ii) the result of Transaction B.

(k2) Distributing 2 is not an organization that is exempt from federal income tax under § 501 or any other provision of the Code.

(l2) All other transactions undertaken contemporaneously with, in anticipation of, in conjunction with, or in any way related to, the Sub 1 Merger have been fully disclosed.

(m2) The Sub 1 Merger will occur pursuant to the corporate merger statute under applicable state law.

(n2) Upon the Sub 1 Merger, all of the assets and liabilities of Sub 1 will become assets and liabilities of Distributing 2.

(o2) The fair market value of the Distributing 2 Common Stock received by each of Distributing 1 and Sub 4 will be approximately equal to the fair market value of the Sub 1 Common Stock. Distributing 1 and Sub 4 will surrender in the Sub 1 Merger.

(p2) At least 40 percent of the proprietary interest in Sub 1 will be exchanged (or deemed exchanged) for shares of Distributing 2 Common Stock and that proprietary interest will be preserved (within the meaning of § 1.368-1(e)).

(q2) Except for the cancellation in the Sub 4 Merger of Distributing 2 Common Stock issued to Sub 4, there is no plan or intention for Distributing 2, or for any party related to Distributing 2 (within the meaning of § 1.368-1(e)(4)), to redeem or acquire any Distributing 2 Common Stock issued in the Sub 1 Merger, either directly or through any transaction, agreement, or other arrangement with any other person.

(r2) Distributing 2 has no plan or intention to sell or otherwise dispose of any of the assets of Sub 1 acquired in the Sub 1 Merger, except for (i) the cancellation of Sub

4 Common Stock in the Sub 4 Merger, (ii) the exchange of Distributing 1 Common Stock in the First Internal Split-Off, and (iii) dispositions made in the ordinary course of business.

(s2) The liabilities of Sub 1 assumed by Distributing 2 and the liabilities to which the transferred assets of Sub 1 are subject were incurred by Sub 1 in the ordinary course of its business or in unrelated past transactions.

(t2) Following the Sub 1 Merger, Distributing 2 will continue the historical business of Sub 1 or use a significant portion of Sub 1's historical business assets in a business as required and defined in § 1.368-1(d).

(u2) There is no intercorporate indebtedness existing between Sub 1 and Distributing 2 that was issued, acquired, or will be settled at a discount.

(v2) No two parties to the Sub 1 Merger are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

(w2) Sub 1 is not under the jurisdiction of a court in a title 11 or similar case within the meaning of § 368(a)(3)(A).

(x2) The total fair market value of the assets of Sub 1 transferred to Distributing 2 will exceed the sum of the liabilities assumed by Distributing 2 (within the meaning of § 357(d)). The fair market value of the assets of Distributing 2 will exceed the amount of its liabilities immediately after the Sub 1 Merger.

(y2) Distributing 2 and Sub 1 will adopt a plan of merger, and the Sub 1 Merger will occur pursuant to such plan.

(z2) Distributing 2, Distributing 1, Sub 1, and Sub 4 will each pay their own expenses, if any, in connection with the Sub 1 Merger.

#### Sub 4 Merger

The following representations have been made regarding the Sub 4 Merger:

(a3) Distributing 2, on the date of adoption of the Sub 4 Merger Agreement, and at all times until the Sub 4 Merger, will be the owner of at least 80 percent of the Sub 4 Common Stock.

(b3) No shares of Sub 4 Common Stock will have been redeemed during the three years preceding the adoption of the Sub 4 Merger Agreement.

(c3) All distributions from Sub 4 to Distributing 2 in the Sub 4 Merger will be made within a single taxable year of Sub 4.

(d3) Upon the Sub 4 Merger, Sub 4's separate legal existence will cease.

(e3) Sub 4 will retain no assets following the Sub 4 Merger.

(f3) Except for the Sub 8 Exchange, the First Internal Split-Off and Transaction B, the liquidation of Sub 4 will not be preceded or followed by the reincorporation in, or transfer or sale to, a recipient corporation of any of the businesses or assets of Sub 4, if persons holding, directly or indirectly, more than 20 percent in value of the Sub 4 Common Stock also hold, directly or indirectly, more than 20 percent in value of the stock in the recipient corporation. For purposes of this representation, ownership will be determined by application of the constructive ownership rules of § 318(a) as modified by § 304(c)(3).

(g3) Prior to the adoption of the Sub 4 Merger Agreement, no assets of Sub 4 will have been distributed in kind, transferred, or sold to Distributing 2, except for (i) transactions occurring in the normal course of business, (ii) transactions occurring more than three years prior to adoption of the Sub 4 Merger Agreement, (iii) transactions pursuant to Transaction B, and (iv) the distribution of the proceeds of Transaction C.

(h3) Sub 4 will report all earned income represented by assets that will be distributed to Distributing 2 and Distributing 1, such as receivables being reported on a cash basis, unfinished construction contracts, commissions due, etc.

(i3) The fair market value of the assets of Sub 4 will exceed its liabilities both at the date of the adoption of the Sub 4 Merger Agreement and immediately prior to the Sub 4 Merger.

(j3) There is no intercorporate debt existing between Distributing 2 and Sub 4 and none has been cancelled, forgiven, or discounted, except for transactions that occurred more than three years prior to the date of adoption of the Sub 4 Merger Agreement.

(k3) Distributing 2 is not an organization that is exempt from federal income tax under § 501 or any other provision of the Code.

(l3) All other transactions undertaken contemporaneously with, in anticipation of, in conjunction with, or in any way related to, the Sub 4 Merger have been fully disclosed.

(m3) The Sub 4 Merger will occur pursuant to the corporate merger statute under applicable state law.

(n3) Upon the Sub 4 Merger, all of the assets and liabilities of Sub 4 will become assets and liabilities of Distributing 2.

(o3) The fair market value of the Distributing 2 Common Stock received by Distributing 1 will be approximately equal to the fair market value of the Sub 4 Common Stock Distributing 1 will surrender in the Sub 4 Merger.

(p3) At least 40 percent of the proprietary interest in Sub 4 will be exchanged (or deemed exchanged) for shares of Distributing 2 Common Stock and that proprietary interest will be preserved within the meaning of § 1.368-1(e).

(q3) There is no plan or intention for Distributing 2, or for any party related to Distributing 2 (within the meaning of § 1.368-1(e)(4)), to redeem or acquire any Distributing 2 Common Stock issued in the Sub 4 Merger, either directly or through any transaction, agreement, or other arrangement with any other person.

(r3) Distributing 2 has no plan or intention to sell or otherwise dispose of any of the assets of Sub 4 acquired in the Sub 4 Merger, except for (i) the exchange of Sub 8 Class B Common Stock in the Sub 8 Exchange, (ii) the exchange of Distributing 1 Common Stock and Distributing 1 Series A Common Stock in the First Internal Split-Off, and (iii) dispositions made in the ordinary course of business.

(s3) The liabilities of Sub 4 assumed by Distributing 2 and the liabilities to which the transferred assets of Sub 4 are subject were incurred by Sub 4 in the ordinary course of its business.

(t3) Following the Sub 4 Merger, Distributing 2 will continue the historical business of Sub 4 or use a significant portion of Sub 4's historical business assets in a business as required and defined in § 1.368-1(d).

(u3) There is no intercorporate indebtedness existing between Sub 4 and Distributing 2 that was issued, acquired, or will be settled at a discount.

(v3) No two parties to the Sub 4 Merger are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

(w3) Sub 4 is not under the jurisdiction of a court in a title 11 or similar case within the meaning of § 368(a)(3)(A).

(x3) The total fair market value of the assets of Sub 4 transferred to Distributing 2 will exceed the sum of the liabilities assumed by Distributing 2 (within the meaning of § 357(d)). The fair market value of the assets of Distributing 2 will exceed the amount of its liabilities immediately after the Sub 4 Merger.

(y3) Distributing 2 and Sub 4 will adopt a plan of merger, and the Sub 4 Merger will occur pursuant to such plan.



(z3) Distributing 2, Distributing 1, and Sub 4 will each pay their own expenses, if any, in connection with the Sub 4 Merger.

#### First Internal Split-Off

The following representations have been made regarding the First Internal Split-Off:

(a4) The indebtedness, if any, owed by Controlled to Distributing 1 after the First Internal Split-Off will not constitute stock or securities.

(b4) The fair market value of the Controlled Common Stock received by Distributing 2 will be approximately equal to the fair market value of the Distributing 1 Series A Common Stock and Distributing 1 Common Stock surrendered by Distributing 2 in the First Internal Split-Off.

(c4) No part of the consideration to be distributed by Distributing 1 will be received by Distributing 2 as a creditor, employee, or in any capacity other than that of a shareholder of Distributing 1.

(d4) The five years of financial information submitted on behalf of Business A (as conducted by the Distributing 1 SAG), represents the present operations of the business, and regarding the business, there have been no substantial operational changes since the date of the last financial statement submitted.

(e4) The Distributing 1 SAG neither acquired Business A nor acquired control of an entity conducting Business A during the five-year period ending on the date of the First Internal Split-Off in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part. Throughout the five-year period ending on the date of the First Internal Split-Off, the Distributing 1 SAG has been the principal owner of the goodwill and significant assets of Business A and will continue to be the principal owner following the First Internal Split-Off.

(f4) The five years of financial information submitted on behalf of Business B (as conducted by Controlled), represents the present operations of the business, and regarding the business, there have been no substantial operational changes since the date of the last financial statement submitted.

(g4) Controlled neither acquired Business B nor acquired control of an entity conducting Business B during the five-year period ending on the date of the First Internal Split-Off in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part, excluding in each case acquisitions that constitute expansions, as contemplated by § 1.355-3(b)(3)(ii), of Business B. Throughout the five-year period ending on the date of the First Internal Split-Off, Controlled will have been the principal owner of the goodwill and significant assets of Business B excluding, in

each case, expansions of Business B, as contemplated by § 1.355-3(b)(3)(ii), and will continue to be the principal owner following the First Internal Split-Off.

(h4) Following the First Internal Split-Off, the Distributing 1 SAG will continue the active conduct of Business A, and Controlled will continue the active conduct of Business B independently and with their separate employees.

(i4) The First Internal Split-Off is being carried out to facilitate the External Distribution. The First Internal Split-Off is motivated, in whole or substantial part, by this business purpose.

(j4) The First Internal Split-Off is not used principally as a device for the distribution of the earnings and profits of Distributing 1 or Controlled or both.

(k4) For purposes of § 355(d), immediately after the First Internal Split-Off, no person (determined after applying § 355(d)(7) and (8)(A)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing 1 stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing 1 stock, that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the First Internal Split-Off.

(l4) For purposes of § 355(d), immediately after the First Internal Split-Off, no person (determined after applying § 355(d)(7) and (8)(A)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled stock, that was either (i) acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the First Internal Split-Off or (ii) attributable to distributions on Distributing 1 stock that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the First Internal Split-Off.

(m4) No intercorporate debt will exist between Distributing 1 (and its subsidiaries) and Controlled (and its subsidiaries) at the time of, or subsequent to, the First Internal Split-Off, except for (i) accounts payable or receivable arising in the ordinary course of business, if any, and (ii) amounts due under the Continuing Agreements.

(n4) Immediately before the First Internal Split-Off, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations (see §§ 1.1502-13 and 1.1502-14 as in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; § 1.1502-13 as published by T.D. 8597). Distributing 1's excess loss account, if any, with respect to its Controlled Common Stock will be included in income immediately

before the First Internal Split-Off to the extent required by applicable regulations (see § 1.1502-19). Furthermore, immediately prior to the First Internal Split-Off, Distributing 1 will not have an excess loss account in the Controlled Common Stock that it owns.

(o4) Payments made in connection with all continuing transactions, if any, between Distributing 1 and Controlled, will be based on terms and conditions arrived at by the parties bargaining at arm's length, except for certain transactions and arrangements under the Continuing Agreements, which may be based on cost or cost-plus arrangements.

(p4) The First Internal Split-Off is not part of a plan or series of related transactions (within the meaning of § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest (within the meaning of § 355(d)(4)) in Distributing 1 or Controlled (including any predecessor or successor of either corporation).

(q4) Immediately after the transaction (as defined in § 355(g)(4)), either (i) no person will hold a 50-percent or greater interest (within the meaning of § 355(g)(3)) in Distributing 1 or Controlled, (ii) if any person holds a 50-percent or greater interest (within the meaning of § 355(g)(3)) in any disqualified investment corporation (within the meaning of § 355(g)(2)), such person will have held such interest in such corporation immediately before the transaction, or (iii) neither Distributing 1 nor Controlled will be a disqualified investment corporation (within the meaning of § 355(g)(2)).

(r4) No two parties to the transaction are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

#### Sub 8 Exchange and Second Internal Split-Off

The following representations have been made regarding the Sub 8 Exchange and the Second Internal Split-Off:

(a5) The indebtedness, if any, owed by Controlled to Distributing 2 after the Second Internal Split-Off will not constitute stock or securities.

(b5) The fair market value of the Controlled Common Stock received by Parent will be approximately equal to the fair market value of the Distributing 2 Common Stock surrendered by Parent in the Second Internal Split-Off.

(c5) No part of the consideration to be distributed by Distributing 2 will be received by Parent as a creditor, employee, or in any capacity other than that of a shareholder of Distributing 2.

(d5) The five years of financial information submitted on behalf of Business A (as conducted by the Distributing 2 SAG), represents the present operations of the

business, and regarding the business, there have been no substantial operational changes since the date of the last financial statement submitted.

(e5) The Distributing 2 SAG neither acquired Business A nor acquired control of an entity conducting Business A during the five-year period ending on the date of the Second Internal Split-Off in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part. Throughout the five-year period ending on the date of the Second Internal Split-Off, the Distributing 2 SAG has been the principal owner of the goodwill and significant assets of Business A and will continue to be the principal owner following the Second Internal Split-Off.

(f5) The five years of financial information submitted on behalf of Business B (as conducted by Controlled), represents the present operations of the business, and regarding the business, there have been no substantial operational changes since the date of the last financial statement submitted.

(g5) Controlled neither acquired Business B nor control of an entity conducting Business B during the five-year period ending on the date of the Second Internal Split-Off in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part, excluding in each case acquisitions that constitute expansions, as contemplated by § 1.355-3(b)(3)(ii), of Business B. Throughout the five-year period ending on the date of the Second Internal Split-Off, Controlled will have been the principal owner of the goodwill and significant assets of Business B excluding, in each case, expansions of Business B, as contemplated by § 1.355-3(b)(3)(ii), and will continue to be the principal owner following the Second Internal Split-Off.

(h5) Following the Second Internal Split-Off, the Distributing 2 SAG will continue the active conduct of Business A, and Controlled will continue the active conduct of Business B independently and with their separate employees.

(i5) The Second Internal Split-Off is being carried out to facilitate the External Distribution. The Second Internal Split-Off is motivated, in whole or substantial part, by this business purpose.

(j5) The Second Internal Split-Off is not used as a device for the distribution of the earnings and profits of Distributing 2 or Controlled or both.

(k5) The total adjusted basis and the fair market value of the assets transferred to Controlled by Distributing 2 in the Sub 8 Exchange will equal or exceed the total liabilities, if any, assumed (within the meaning of § 357(d)) by Controlled.

(l5) Any liabilities assumed (as determined under § 357(d)) by Controlled in the Sub 8 Exchange, if any, will have been incurred in the ordinary course of business and will be associated with the assets transferred.

(m5) The total fair market value of the assets transferred to Controlled in the Sub 8 Exchange will exceed the sum of (i) the amount of any liabilities assumed (as determined under § 357(d)) by Controlled in connection with the exchange, (ii) the amount of any liabilities owed to Controlled by Distributing 2 that are discharged or extinguished in connection with the exchange, and (iii) the amount of any cash and the fair market value of any other property (other than stock and securities permitted to be received under § 361(a) without the recognition of gain) received by Distributing 2 in connection with the exchange. The fair market value of the assets of Controlled will exceed the amount of its liabilities immediately after the exchange.

(n5) For purposes of § 355(d), immediately after the Second Internal Split-Off, no person (determined after applying § 355(d)(7) and (8)(A)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing 2 stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing 2 stock, that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Second Internal Split-Off.

(o5) For purposes of § 355(d), immediately after the Second Internal Split-Off, no person (determined after applying § 355(d)(7) and (8)(A)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled stock, that was either (i) acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Second Internal Split-Off or (ii) attributable to distributions on stock of the distributing corporation that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Second Internal Split-Off.

(p5) No intercorporate debt will exist between Distributing 2 (and its subsidiaries) and Controlled (and its subsidiaries) at the time of, or subsequent to, the Second Internal Split-Off, except for (i) accounts payable or receivable arising in the ordinary course of business, if any, and (ii) amounts due under the Continuing Agreements.

(q5) Immediately before the Second Internal Split-Off, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations (see §§ 1.1502-13 and 1.1502-14 as in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; § 1.1502-13 as published by T.D. 8597). Distributing 2's excess loss account, if any, with respect to its Controlled Common Stock will be included in income immediately before the Second Internal Split-Off to the extent required by applicable regulations (see § 1.1502-19). Furthermore, immediately prior to the Second Internal Split-Off, Distributing 2 will not have an excess loss account in the Controlled Common Stock that it owns.

(r5) Payments made in connection with all continuing transactions, if any, between Distributing 2 and Controlled, will be based on terms and conditions arrived at by the parties bargaining at arm's length, except for certain transactions and arrangements under the Continuing Agreements, which may be based on cost or cost-plus arrangements.

(s5) No two parties to the transaction are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

(t5) The Second Internal Split-Off is not part of a plan or series of related transactions (within the meaning of § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest (within the meaning of § 355(d)(4)) in Distributing 2 or Controlled (including any predecessor or successor of either corporation).

(u5) Immediately after the transaction (as defined in § 355(g)(4)), either (i) no person will hold a 50-percent or greater interest (within the meaning of § 355(g)(3)) in Distributing 2 or Controlled, (ii) if any person holds a 50-percent or greater interest (within the meaning of § 355(g)(3)) in any disqualified investment corporation (within the meaning of § 355(g)(2)), such person will have held such interest in such corporation immediately before the transaction, or (iii) neither Distributing 2 nor Controlled will be a disqualified investment corporation (within the meaning of § 355(g)(2)).

#### Recapitalization

The following representations have been made regarding the Recapitalization:

(a6) The fair market value of the Controlled New Common Stock to be received by the exchanging shareholders immediately after the Recapitalization will be approximately equal to the fair market value of the Controlled Common Stock surrendered in the exchange therefor, immediately before the Recapitalization.

(b6) Controlled has no plan or intention to redeem or otherwise reacquire any of the Controlled New Common Stock to be issued in the Recapitalization, other than pursuant to a Controlled reverse stock split.

(c6) The Recapitalization is not part of a plan to periodically increase the proportionate interest of any shareholder in the assets or earnings and profits of Controlled.

(d6) Controlled will pay its own expenses and will not pay the expenses of its shareholders, if any, in connection with the Recapitalization.

(e6) Controlled is not under the jurisdiction of a court in a Title 11 or similar case within the meaning of § 368(a)(3)(A).

### External Distribution

The following representations have been made regarding the External Distribution:

(a7) The indebtedness, if any, owed by Controlled to Parent after the External Distribution will not constitute stock or securities.

(b7) If Parent elects to accomplish the External Distribution as an External Split-Off, in whole or in part, the fair market value of the Controlled New Common Stock received by Parent shareholders will be approximately equal to the fair market value of the Parent Common Stock surrendered by Parent shareholders in the External Distribution.

(c7) No part of the consideration to be distributed by Parent will be received by Parent shareholders as creditors, employees, or in any capacity other than that of shareholders of Parent.

(d7) The five years of financial information submitted on behalf of Business A (as conducted by the Parent SAG), represents the present operations of the business, and regarding the business, there have been no substantial operational changes since the date of the last financial statement submitted.

(e7) Parent SAG neither acquired Business A nor acquired control of an entity conducting Business A during the five-year period ending on the date of the External Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part. Throughout the five-year period ending on the date of the External Distribution, the Parent SAG has been the principal owner of the goodwill and significant assets of Business A and will continue to be the principal owner following the External Distribution.

(f7) The five years of financial information submitted on behalf of Business B (as conducted by Controlled), represents the present operations of the business, and regarding the business, there have been no substantial operational changes since the date of the last financial statement submitted.

(g7) Controlled neither acquired Business B nor acquired control of an entity conducting Business B during the five-year period ending on the date of the External Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part, excluding in each case acquisitions that constitute expansions, as contemplated by § 1.355-3(b)(3)(ii), of Business B. Throughout the five-year period ending on the date of the External Distribution, Controlled will have been the principal owner of the goodwill and significant assets of Business B excluding, in each

case, expansions of Business B, as contemplated by § 1.355-3(b)(3)(ii), and will continue to be the principal owner following the External Distribution.

(h7) Following the External Distribution, the Parent SAG will continue the active conduct of Business A, and Controlled will continue the active conduct of Business B, independently and with their separate employees.

(i7) The External Distribution is being carried out to (i) improve the “fit” of Parent’s businesses, (ii) permit Parent management to “focus” on a more narrowly-tailored portfolio of businesses, (iii) improve the regulatory profile of the Parent and Controlled businesses, and (iv) make Parent equity-based compensation more responsive to the financial performance of Parent’s remaining businesses. The External Distribution is motivated, in whole or substantial part, by these business purposes.

(j7) The External Distribution is not used principally as a device for the distribution of the earnings and profits of Parent or Controlled or both.

(k7) For purposes of § 355(d), immediately after the External Distribution, no person (determined after applying § 355(d)(7) and (8)(A)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Parent stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Parent stock, that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the External Distribution.

(l7) For purposes of § 355(d), immediately after the External Distribution, no person (determined after applying § 355(d)(7) and (8)(A)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled stock entitled to vote, or 50 percent or more of the total value of shares of all classes of stock, that was either (i) acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the External Distribution or (ii) attributable to distributions on Parent stock that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the External Distribution.

(m7) No intercorporate debt will exist between Parent (and its subsidiaries) and Controlled (and its subsidiaries) at the time of, or subsequent to, the External Distribution, except for (i) accounts payable or receivable arising in the ordinary course of business, if any, (ii) amounts due under the Continuing Agreements, and (iii) the Contingency Loan.

(n7) Immediately before the External Distribution, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations (see §§ 1.1502-13 and 1.1502-14 as in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect;



§ 1.1502-13 as published by T.D. 8597). Parent's excess loss account, if any, with respect to its Controlled New Common Stock will be included in income immediately before the External Distribution to the extent required by applicable regulations (see § 1.1502-19). Furthermore, immediately prior to the External Distribution, Parent will not have an excess loss account in the Controlled New Common Stock that it owns.

(o7) Payments made in connection with all continuing transactions, if any, between Parent and Controlled, will be based on terms and conditions arrived at by the parties bargaining at arm's length, except for certain transactions and arrangements under the Continuing Agreements, which may be based on cost or cost-plus arrangements.

(p7) No two parties to the transaction are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

(q7) The External Distribution is not part of a plan or series of related transactions (within the meaning of § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest (within the meaning of § 355(d)(4)) in Parent or Controlled (including any predecessor or successor of Parent or Controlled).

(r7) Immediately after the transaction (as defined in § 355(g)(4)), either (i) no person will hold a 50 percent or greater interest (within the meaning of § 355(g)(3)) in Parent or Controlled, (ii) if any person holds a 50-percent or greater interest (within the meaning of § 355(g)(3)) in any disqualified investment corporation (within the meaning of § 355(g)(2)), such person will have held such interest in such corporation immediately before the transaction, or (iii) neither Parent nor Controlled will be a disqualified investment corporation (within the meaning of § 355(g)(2)).

(s7) Parent, Controlled, and their respective shareholders will each pay their own expenses, if any, in connection with the External Distribution.

## **Rulings**

### **Sub 6 Merger**

Based solely on the information submitted and the representations made, we rule as follows on the Sub 6 Merger, if it is consummated:

(1) The Sub 6 Merger will qualify as a complete liquidation of Sub 6 into Distributing 1 (§ 332 and § 1.332-2(d)).

(2) No gain or loss will be recognized by Sub 6 on the distribution of its assets to, and assumption of liabilities by, Distributing 1 (§§ 336(d)(3) and 337).

(3) No gain or loss will be recognized by Distributing 1 on its receipt of Sub 6's assets and assumption of liabilities (§ 332(a)).

(4) Except as provided in § 334(b)(1)(B), Distributing 1's basis in each asset received from Sub 6 in the Sub 6 Merger will equal the basis of that asset in the hands of Sub 6 immediately prior to the Sub 6 Merger (§ 334(b)(1)).

(5) Distributing 1's holding period in each asset received from Sub 6 in the Sub 6 Merger will include the period during which that asset was held by Sub 6 (§ 1223(2)).

(6) Distributing 1 will succeed to and take into account, as of the close of the effective date of the Sub 6 Merger, the items of Sub 6 described in § 381(c), subject to the conditions and limitations specified in §§ 381, 382, 383, 384 and the regulations thereunder (§ 381(a) and § 1.381(a)-1). Any deficit in the earnings and profits of Sub 6 will be used only to offset earnings and profits accumulated by Distributing 1 after the date of the Sub 6 Merger (§ 381(c)(2)(B)).

#### Sub 1 Merger

Based solely on the information submitted and the representations made, we rule as follows on the Sub 1 Merger:

(7) The Sub 1 Merger will qualify as a complete liquidation of Sub 1 into Distributing 2 (§ 332 and § 1.332-2(d)).

(8) No gain or loss will be recognized by Sub 1 on the distribution of its assets to, and assumption of liabilities by, Distributing 2 (§§ 336(d)(3) and 337).

(9) No gain or loss will be recognized by Distributing 2 on its receipt of Sub 1's assets and assumption of liabilities (§ 332(a)).

(10) Except as provided in § 334(b)(1)(B), Distributing 2's basis in each asset received from Sub 1 in the Sub 1 Merger will equal the basis of that asset in the hands of Sub 1 immediately prior to the Sub 1 Merger (§ 334(b)(1)).

(11) Distributing 2's holding period in each asset received from Sub 1 in the Sub 1 Merger will include the period during which that asset was held by Sub 1 (§ 1223(2)).

(12) Distributing 2 will succeed to and take into account, as of the close of the effective date of the Sub 1 Merger, the items of Sub 1 described in § 381(c), subject to the conditions and limitations specified in §§ 381, 382, 383, 384 and the regulations thereunder (§ 381(a) and § 1.381(a)-1). Any deficit in the earnings and profits of Sub 1

will be used only to offset earnings and profits accumulated by Distributing 2 after the date of the Sub 1 Merger (§ 381(c)(2)(B)).

(13) The Sub 1 Merger will qualify as a reorganization within the meaning of § 368(a)(1)(A). Sub 1 and Distributing 2 will each be a “party to a reorganization” within the meaning of § 368(b).

(14) No gain or loss will be recognized by Distributing 2 or Sub 1 in the Sub 1 Merger (§§ 361(a) and 357(a)).

(15) No gain or loss will be recognized by Distributing 1 or Sub 4 upon the receipt of Distributing 2 Common Stock in exchange for Sub 1 Common Stock in the Sub 1 Merger (§ 354(a)(1)).

(16) The aggregate basis of the Distributing 2 Common Stock received by each of Distributing 1 and Sub 4 will equal its aggregate basis in the Sub 1 Common Stock surrendered therefor (§ 358(a)(1)).

(17) The holding period of the Distributing 2 Common Stock received by Distributing 1 or Sub 4 will include the holding period of the Sub 1 Common Stock exchanged therefor, provided that such Sub 1 Common Stock is held as a capital asset on the date of the Sub 1 Merger (§ 1223(1)).

#### Sub 4 Merger

Based solely on the information submitted and the representations made, we rule as follows on the Sub 4 Merger:

(18) The Sub 4 Merger will qualify as a complete liquidation of Sub 4 into Distributing 2 (§ 332 and § 1.332-2(d)).

(19) No gain or loss will be recognized by Sub 4 on the distribution of its assets to, and assumption of liabilities by, Distributing 2 (§§ 336(d)(3) and 337).

(20) No gain or loss will be recognized by Distributing 2 on its receipt of Sub 4's assets and assumption of liabilities (§ 332).

(21) Except as provided in § 334(b)(1)(B), Distributing 2's basis in each asset received from Sub 4 in the Sub 4 Merger will equal the basis of that asset in the hands of Sub 4 immediately prior to the Sub 4 Merger (§ 334(b)(1)).

(22) Distributing 2's holding period in each asset received from Sub 4 in the Sub 4 Merger will include the period during which that asset was held by Sub 4 (§ 1223(2)).

(23) Distributing 2 will succeed to and take into account, as of the close of the effective date of the Sub 4 Merger, the items of Sub 4 described in § 381(c), subject to the conditions and limitations specified in §§ 381, 382, 383, 384 and the regulations thereunder (§ 381(a) and § 1.381(a)-1). Any deficit in the earnings and profits of Sub 4 will be used only to offset earnings and profits accumulated by Distributing 2 after the date of the Sub 4 Merger (§ 381(c)(2)(B)).

(24) The Sub 4 Merger will qualify as a reorganization within the meaning of § 368(a)(1)(A). Sub 4 and Distributing 2 will each be a “party to a reorganization” within the meaning of § 368(b).

(25) No gain or loss will be recognized by Distributing 2 or Sub 4 in the Sub 4 Merger (§§ 361(a) and 357(a)).

(26) No gain or loss will be recognized by Distributing 1 upon the receipt of Distributing 2 Common Stock in exchange for Sub 4 Common Stock in the Sub 4 Merger (§ 354(a)(1)).

(27) The aggregate basis of the Distributing 2 Common Stock received by Distributing 1 will equal its aggregate basis in the Sub 4 Common Stock surrendered therefor (§ 358(a)(1)).

(28) The holding period of the Distributing 2 Common Stock received by Distributing 1 will include the holding period of the Sub 4 Common Stock exchanged therefor, provided that such Sub 4 Common Stock is held as a capital asset on the date of the Sub 4 Merger (§ 1223(1)).

#### First Internal Split-Off

Based solely on the information submitted and the representations made, we rule as follows on the First Internal Split-Off:

(29) No gain or loss will be recognized by Distributing 1 on the distribution of Controlled Common Stock in the First Internal Split-Off (§ 355(c)(1)).

(30) No gain or loss will be recognized by (and no amount will be included in income of) Distributing 2 on the receipt of Controlled Common Stock in the First Internal Split-Off (§ 355(a)(1)).

(31) The aggregate basis of the Controlled Common Stock received by Distributing 2 in the First Internal Split-Off will equal Distributing 2’s aggregate basis in the Distributing 1 Series A Common Stock and Distributing 1 Common Stock exchanged therefor (§ 358(a)(1)).

(32) The holding period of the Controlled Common Stock received by Distributing 2 in the First Internal Split-Off will include the holding period of the Distributing 1 Series A Common Stock and Distributing 1 Common Stock exchanged therefor, provided that such Distributing 1 Series A Common Stock and Distributing 1 Common Stock was held as a capital asset on the date of the First Internal Split-Off (§ 1223(1)).

(33) Earnings and profits, if any, will be allocated between Distributing 1 and Controlled in accordance with § 312(h) and §§ 1.312-10(b) and 1.1502-33.

#### Sub 8 Exchange and Second Internal Split-Off

Based solely on the information submitted and the representations made, we rule as follows on the Sub 8 Exchange and the Second Internal Split-Off:

(34) The Sub 8 Exchange, followed by the Second Internal Split-Off, will qualify as a reorganization within the meaning of § 368(a)(1)(D). Distributing 2 and Controlled will each be a “party to a reorganization” within the meaning of § 368(b).

(35) No gain or loss will be recognized by Distributing 2 on the Sub 8 Exchange (§§ 361(a) and 357(a)).

(36) No gain or loss will be recognized by Controlled on the Sub 8 Exchange (§ 1032(a)).

(37) The aggregate basis of the Sub 8 Class B Common Stock received by Controlled in the Sub 8 Exchange will equal Distributing 2’s aggregate basis in the Sub 8 Class B Common Stock immediately prior to the Sub 8 Exchange (§ 362(b)).

(38) The holding period of the Sub 8 Class B Common Stock received by Controlled in the Sub 8 Exchange will include Distributing 2’s holding period in the Sub 8 Class B Common Stock immediately prior to the Sub 8 Exchange (§ 1223(2)).

(39) No gain or loss will be recognized by Distributing 2 on the distribution of Controlled Common Stock in the Second Internal Split-Off (§ 361(c)(1)).

(40) No gain or loss will be recognized by (and no amount will be included in income of) Parent on the receipt of Controlled Common Stock in the Second Internal Split-Off (§ 355(a)(1)).

(41) The aggregate basis of the Controlled Common Stock received by Parent in the Second Internal Split-Off will equal Parent’s aggregate basis in the Distributing 2 Common Stock exchanged therefor (§ 358(a)(1)).

(42) The holding period of the Controlled Common Stock received by Parent in the Second Internal Split-Off will include the holding period of the Distributing 2 Common Stock exchanged therefor, provided that such Distributing 2 Common Stock was held as a capital asset on the date of the Second Internal Split-Off (§ 1223(1)).

(43) Earnings and profits, if any, will be allocated between Distributing 2 and Controlled in accordance with § 312(h) and §§ 1.312-10(a) and 1.1502-33.

#### Special Dividend

Based solely on the information submitted and the representations made, we rule as follows on the Special Dividend:

(44) The portion of the Special Dividend received by Parent will be treated as an intercompany distribution to which § 1.1502-13(f)(2) applies.

(45) Parent's aggregate basis in the Controlled Common Stock it owns will be reduced by the portion of the Special Dividend Parent receives (§ 1.1502-32).

(46) The portion of the Special Dividend received by Controlled's public shareholders will be treated as a distribution to which § 301 applies.

#### Recapitalization

Based solely on the information submitted and the representations made, we rule as follows on the Recapitalization:

(47) The Recapitalization will qualify as a reorganization within the meaning of § 368(a)(1)(E). Controlled will be a "party to a reorganization" within the meaning of § 368(b).

(48) No gain or loss will be recognized by Controlled on the issuance of Controlled New Common Stock in the Recapitalization (§ 1032).

(49) Except with respect to cash received in lieu of a fractional share, no gain or loss will be recognized by Controlled's shareholders on the receipt of Controlled New Common Stock in exchange for Controlled Common Stock in the Recapitalization (§ 354(a)).

(50) The aggregate basis of the Controlled New Common Stock received in the Recapitalization, including any fractional share to which a shareholder may be entitled, will equal the aggregate basis of the Controlled Common Stock owned immediately prior to the Recapitalization (§ 358(a)(1)).

(51) The holding period of the Controlled New Common Stock received in the Recapitalization, including any fractional share to which a shareholder may be entitled, will include the holding period in the Controlled Common Stock exchanged therefor, provided that such Controlled Common Stock was held as a capital asset on the date of the Recapitalization (§ 1223(1)).

(52) A Controlled shareholder that receives cash in lieu of a fractional share of Controlled New Common Stock will recognize gain or loss measured by the difference between the basis of such fractional share, as determined above in ruling (50), and the amount of cash received (§ 1001). Any gain or loss will be treated as capital gain or loss, provided the fractional share was held as a capital asset on the date of the Recapitalization (§§ 1221 and 1222).

#### External Distribution

Based solely on the information submitted and the representations made, we rule as follows on the External Distribution:

(53) No gain or loss will be recognized by Parent on the distribution of Controlled New Common Stock in the External Distribution (§ 355(c)(1)).

(54) Except with respect to cash received in lieu of a fractional share, no gain or loss will be recognized by (and no amount will be included in the income of) Parent shareholders on the receipt of Controlled New Common Stock in the External Distribution (§ 355(a)(1)).

(55) A Parent shareholder that receives cash in lieu of a fractional share of Controlled New Common Stock will recognize gain or loss measured by the difference between the basis of such fractional share, as determined below in ruling (56), and the amount of cash received (§ 1001). Any gain or loss will be treated as capital gain or loss, provided the fractional share was held as a capital asset on the date of the External Distribution (§§ 1221 and 1222).

(56) To the extent the External Distribution is effected as an External Split-Off, the aggregate basis of the Controlled New Common Stock received by each Parent shareholder in the External Split-Off will equal such Parent shareholder's aggregate basis in the Parent Common Stock exchanged therefor (§ 358(a)(1)). To the extent the External Distribution is effected as an External Spin-Off or a Clean-Up Spin-Off, each Parent shareholder's aggregate basis in its Parent Common Stock and the Controlled New Common Stock received in such External Spin-Off or Clean-Up Spin-Off will equal the aggregate basis the Parent shareholder had in the Parent Common Stock immediately prior to such External Spin-Off or Clean-Up Spin-Off, as applicable, allocated in proportion to the fair market value of each in accordance with § 1.358-2(a)(2) (§ 358(b)(2) and (c)).

(57) The holding period of the Controlled New Common Stock received by each Parent shareholder in the External Distribution will include the holding period of such Parent shareholder in (i) the Parent Common Stock surrendered in exchange therefor in the case of an External Split-Off or (ii) the Parent Common Stock on which the distribution was made in the case of an External Spin-Off or Clean-Up Spin-Off, provided that such Parent Common Stock was held as a capital asset on the date of the External Distribution (§ 1223(1)).

(58) Earnings and profits, if any, will be allocated between Parent and Controlled in accordance with § 312(h) and §§ 1.312-10(b) and 1.1502-33.

### **Caveats**

We express no opinion about the tax treatment of the Proposed Transaction under other provisions of the Code and regulations or the tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transaction that is not specifically covered by the above rulings. In particular, we express no opinion regarding:

- (i) Whether the First Internal Split-Off, the Second Internal Split-Off, and the External Distribution satisfy the business purpose requirement of § 1.355-2(b);
- (ii) Whether the First Internal Split-Off, the Second Internal Split-Off, and the External Distribution are used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both;
- (iii) Whether the First Internal Split-Off, the Second Internal Split-Off, and the External Distribution and an acquisition or acquisitions are part of a plan (or series of related transactions) under § 355(e)(2)(A)(ii);
- (iv) Whether the acquisitions constitute expansions of Business B under § 1.355-3(b)(3)(ii);
- (v) The federal income tax consequences of any recapitalization that occurs after the Recapitalization; and
- (vi) The federal income tax consequences of any cost or cost-plus arrangements under the Continuing Agreements.

### **Procedural Statements**

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent. A copy of this letter must be



attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of this letter ruling.

In accordance with a power of attorney on file in this office, a copy of this ruling letter is being sent to your authorized representative.

Sincerely,

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Richard K. Passales  
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cc: